

year to which the ownership statements relate. The ownership statements must be made available for inspection at such time and place as the Commissioner may request in writing in accordance with § 1.883-1(c)(3)(ii).

(d) *Reporting requirements.* A controlled foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883-1(c)(2) must include the following information (in addition to the information required by § 1.883-1(c)(3)) with its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation", filed for its taxable year. This information must be consistent with the ownership statements obtained by the controlled foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The relative value of the shares of the controlled foreign corporation that are owned (directly, and indirectly applying the rules of paragraph (b)(4) of this section) by all qualified U.S. persons identified in paragraph (c)(2) of this section as compared to the value of all outstanding shares of the corporation;

(2) The period (or periods) in the taxable year during which such qualified U.S. persons held such shares;

(3) The period (or periods) in the taxable year during which the foreign corporation was a controlled foreign corporation;

(4) A statement as to whether the controlled foreign corporation or any intermediary corporation had bearer shares outstanding during the taxable year, and whether any such bearer shares taken into account for purposes of satisfying the qualified U.S. person ownership test are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(5) Any other information specified by Form 1120-F, and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

[T.D. 9502, 75 FR 56863, Sept. 17, 2010]

§ 1.883-4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883-1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders, as defined in paragraph (b) of this section. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the stock ownership test of § 1.883-1(c)(2) pursuant to this section unless the foreign corporation meets the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder—(1) General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) With respect to the category of income for which the foreign corporation is seeking an exemption, is—

(A) An individual who is a resident, as described in paragraph (b)(2) of this section, of a qualified foreign country;

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of § 1.883-2(a);

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country;

(E) An individual beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) that is administered in or by a qualified foreign country, who is treated as a resident under paragraph (d)(3)(iii) of this section, of a qualified foreign country; or

(F) A shareholder of a foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which

the airline is organized, provided the United States has not waived the ownership requirement in the Air Services Agreement, or that the ownership requirement has not otherwise been made ineffective;

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section, unless such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder.

(2) *Residence of individual shareholders*—(i) *General rule.* An individual described in paragraph (b)(1)(i)(A) of this section is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (e.g., an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country unless all residents of that country are taxed on a remittance basis only) and, in addition—

(A) The individual has a tax home, within the meaning of paragraph (b)(2)(ii) of this section, in that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for

purposes of this section. A foreign estate or trust, as defined in section 7701(a)(31), does not have a tax home for purposes of this section. See paragraph (c)(3) of this section for alternative rules in the case of trusts or estates.

(3) *Certain income tax convention restrictions applied to shareholders.* For purposes of paragraph (b)(1) of this section, a shareholder described in paragraph (b)(1) of this section may be considered a resident of, or organized in, a qualified foreign country if that foreign country provides an exemption by means of an income tax convention with the United States, but only if the shareholder demonstrates that it is treated as a resident of that country under the convention and qualifies for benefits under any Limitation on Benefits article, and that the convention provides an exemption for the relevant category of income. If the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, the shareholder is not required to demonstrate that the corporation seeking qualified foreign corporation status could satisfy any such additional requirement.

(4) *Not-for-profit organizations.* The term *not-for-profit organization* means an organization that meets the following requirements—

(i) It is a corporation, association, taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual beneficiaries of not-for-profit organizations) and on behalf of U.S. exempt organizations that have received determination letters under section 501(c)(3); or

(B) More than 50 percent of its annual support is derived from individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual supporters of not-for-profit organizations).

(5) *Pension funds*—(i) *Pension fund defined.* The term *pension fund* shall mean a government pension fund or a nongovernment pension fund, as those terms are defined, respectively, in paragraphs (b)(5)(ii) and (iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892-2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Nongovernment pension funds.* A nongovernment pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pen-

sion fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(7) of this section for rules regarding the computation of stock ownership through nongovernment pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883-1(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through the chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). Stock issued in bearer form will not be treated as owned proportionately by its shareholders unless the shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident*, see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

Example 1. Stock held solely by qualified shareholders through a partnership. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualified and nonqualified shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1*, except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, only 40 percent of the Z

stock is treated as owned by qualified shareholders.

Example 3. Stock held through tiered partnerships. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent \times 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates—(i) Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiary is treated as owning the stock

under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Taxable nonstock corporations.* A taxable nonstock corporation that is entitled in its country of organization to deduct from its taxable income amounts distributed for charitable purposes may deem a recipient of such charitable distributions to be a shareholder of such taxable nonstock corporation in the same proportion as the amount that such beneficiary receives in the taxable year bears to the total income of such taxable nonstock corporation in the taxable year. Whether each such recipient is a qualified shareholder may then be determined under paragraph (b) of this section or under the special rules of paragraph (d)(3)(vii) of this section.

(6) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an

association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policyholders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(7) *Computation of beneficial interests in nongovernment pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883-1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders for the relevant period. If a foreign corporation relies upon bearer shares in the chain of ownership to satisfy one of the stock ownership tests, the foreign corporation must also establish all of the facts necessary to satisfy the Commissioner that such shares are maintained in a dematerialized book-entry system, as described in § 1.883-1(c)(3)(i)(G), for the benefit of the relevant shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary

ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three-year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless a change of circumstance occurs that makes any information on the ownership statement incorrect.

(3) *Special rules*—(i) *Substantiating residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may substantiate the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules in paragraphs (d)(3)(ii) through (viii) of this section, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered shareholders, that is not a publicly-traded corporation, as described in § 1.883-2 (a widely-held corporation), is not required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year if the requirements of paragraphs (d)(3)(ii)(A) and (B) of this section are satisfied. If the widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may

treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund*. An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, may be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(1) of this section.

(B) *Nongovernment pension fund*. An individual who is a beneficiary of a nongovernment pension fund, as described in paragraph (b)(5)(iii) of this section, may be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the nongovernment pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(2) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations*. Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded corporation and copies of any relevant ownership statements

from shareholders of the publicly-traded corporation relied on to satisfy the exception to the closely-held test of § 1.883-2(d)(3)(ii), as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations*. For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(vi) *Special rule for a foreign airline covered by an air services agreement*. A foreign airline that is covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized may rely exclusively on the Air Services Agreement currently in effect and will not have to otherwise substantiate its ownership under this section, provided that the United States has not waived the ownership requirements in the agreement or that the ownership requirements have not otherwise been made ineffective. Such an airline will be treated as owned by qualified shareholders resident in the country where the foreign airline is organized.

(vii) *Special rule for taxable nonstock corporations*. Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a taxable nonstock corporation will be treated as owned, in any taxable year, by the recipients of distributions made during that taxable year, as set out in paragraph (c)(5) of this section. The

taxable nonstock corporation may treat the address of record in its distribution records as the residence of any recipient if—

(A) An individual recipient's address is in a qualified foreign country and is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent;

(B) The address of a nonindividual recipient's principal place of business is in a qualified foreign country;

(C) The officers and directors of the taxable nonstock corporation neither know nor have reason to know that the recipients do not reside or have their principal place of business at such addresses; and

(D) The foreign corporation receives the statement described in paragraph (d)(4)(v)(D) of this section from the taxable nonstock corporation intermediary.

(viii) *Special rule for closely-held corporations traded in the United States.* To demonstrate that a class of stock is not closely-held for purposes of § 1.883-2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on current Schedule 13D and Schedule 13G filings with the Securities and Exchange Commission to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholder. However, if any class of stock is determined to be closely-held within the meaning of § 1.883-2(d)(3)(i), the publicly traded corporation cannot satisfy the requirements of § 1.883-2(e) unless it obtains sufficient documentation described in this paragraph (d) to demonstrate that the requirements of § 1.883-2(d)(3)(ii) are met with respect to the 5-percent shareholders.

(4) *Ownership statements from shareholders—(i) Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the in-

dividual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns shares of stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation owned by the individual, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation during which the individual owned the shares;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate, or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of the interest that the individual holds in such intermediary, and, if the intermediary is a corporation, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation seeking qualified foreign corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Ownership statements from foreign governments.* An ownership statement from a foreign government that is a qualified shareholder is a written statement—

(A) Signed by any one of the following—

(1) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such a statement on behalf of the authority, agency or office; or

(2) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country); or

(3) An income tax return preparer that, for purposes of this paragraph (d)(4)(ii) only, shall mean a firm of licensed or certified public accountants, a law firm whose principals or members are admitted to practice in one or more states, territories or possessions of the United States or the country of such government, or a bank or other financial institution licensed to do business in such foreign country and having assets at least equivalent to 50 million U.S. dollars and who is authorized to represent the government or governmental authority; and

(B) That provides—

(1) The title of the official or other person signing the statement;

(2) The name and address of the government authority, agency or office that has supervisory authority and, if applicable, the income tax preparer which has prepared such ownership statement;

(3) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied “government” instead of “individual”) with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status;

(4) In the case of an ownership statement prepared by an income tax return preparer, a statement under penalties of perjury identifying the documenta-

tion relied upon in the conduct of due diligence for the taxable year to determine the aggregate government investment in the stock of the shipping or aircraft company in preparation of such ownership statement attached to a valid power of attorney to represent the taxpayer for the taxable year; and

(5) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883-2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883-2(d)(1), if one or more 5-percent shareholders, as defined in § 1.883-2(d)(3)(i), own in the aggregate 50 percent or more of the vote and value of the outstanding shares of that class of stock for more than half the number of days during the taxable year—

(1) The days during the taxable year of the corporation in which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section and the percentage of the vote and value of the class of stock that is owned by 5-percent shareholders during such days;

(2) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of § 1.883-2(d)(3)(ii)—

(i) The name of each such shareholder;

(ii) The percentage of the total value of the class of stock held by each such shareholder and the days during which the stock was held;

(iii) The address of record of each such shareholder; and

(iv) The country of residence of each such shareholder, determined under paragraph (b)(2) or (d)(3) of this section;

(E) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied “publicly-traded corporation” instead of “individual”) with respect to the publicly-traded corporation’s direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied “not-for-profit organization” instead of “individual”);

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(v) *Ownership statements from intermediaries—(A) General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it

and the qualified shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(1) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary, and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or if the intermediary is a pension fund, the name and permanent address of place of administration of the intermediary;

(2) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied “intermediary” instead of “individual”);

(3) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(4) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder), on which the foreign corporation seeking qualified foreign corporation status intends to rely to satisfy the requirements of paragraph (a) of this section. In addition, such intermediary must obtain from all such persons an ownership statement that includes the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the

percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(5) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(6) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds;

(7) If the intermediary is a taxable nonstock corporation, within the meaning of paragraph (c)(5) of this section, the statement set out in paragraph (d)(4)(v)(D) of this section, relating to ownership statements from intermediaries that are taxable nonstock corporations; and

(8) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(B) *Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 registered shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883-2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(i) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(2) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(3) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(C) *Ownership statements from pension funds—(1) Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section (relating to the special rules for pension funds) generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section, and, in addition, the government pension fund must also provide the following information—

(i) The name of the country in which the plan is administered;

(ii) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and nongovernmental employees or former employees that perform or performed governmental or social services;

(iii) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(iv) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(v) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(vi) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(2) *Ownership statements from non-government pension funds.* The trustees, directors, or other administrators of the nongovernment pension fund, as

defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraph (d)(4)(v)(A) of this section. In addition, the nongovernment pension fund must also provide the following information—

(i) The name of the country in which the pension fund is administered;

(ii) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(iii) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(iv) The number of beneficiaries in the pension plan;

(v) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(vi) A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(vii) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(viii) A representation that any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or that the foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or that the pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions, and that employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(ix) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(3) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

(D) *Ownership statements from taxable nonstock corporations.* An ownership statement from an intermediary that is a taxable nonstock corporation must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(1) With respect to paragraph (d)(4)(v)(A)(7) of this section, for each beneficiary that is treated as a qualified shareholder, the name, address of residence (in the case of an individual

beneficiary, the address must be a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary; in the case of a nonindividual beneficiary, the address of the principal place of business) and percentage that is the same proportion as the amount that the beneficiary receives in the tax year bears to the total net income of the taxable nonstock corporation in the tax year;

(2) A representation that the officers and directors of the taxable nonstock corporation neither know nor have reason to know that the individual beneficiaries do not reside at the address listed in paragraph (d)(4)(v)(D)(I) of this section or that any other nonindividual beneficiary does not conduct its primary activities at such address or in such country of residence; and

(3) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder stock ownership test of this section to meet the stock ownership test of § 1.883-1(c)(2) must provide the following information in addition to the information required in § 1.883-1(c)(3) to be included in its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by

qualified shareholders for each category of income for which the exemption is claimed;

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total number of such qualified shareholders as defined in paragraph (b)(1) of this section; the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by such qualified shareholders by country of residence or organization, whichever is applicable; and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

[T.D. 9087, 68 FR 51406, Aug. 26, 2003; 69 FR 7995, Feb. 20, 2004, as amended by T.D. 9332, 72 FR 34608, June 25, 2007; T.D. 9502, 75 FR 56865, Sept. 17, 2010]

§ 1.883-5 Effective/applicability dates.

(a) *General rule.* Sections 1.883-1 through 1.883-4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

(b) *Election for retroactive application.* Taxpayers may elect to apply §§ 1.883-1 through 1.883-4 for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of § 1.883-1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883-2(f), 1.883-3(d) and 1.883-4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before September 25, 2004. Such election shall apply to the taxable year of the election and to all subsequent taxable years beginning before September 25, 2004.

(c) *Transitional information reporting rule.* For taxable years of the foreign